

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

ORLANDO MARTIN,

Plaintiff,

No. CIV S-05-0557 DFL JFM P

vs.

ALVARO C. TRAQUINA, et al.,

Defendants.

ORDER

Plaintiff is a state prisoner proceeding pro se. Plaintiff seeks relief pursuant to 42 U.S.C. § 1983 and has requested leave to proceed in forma pauperis pursuant to 28 U.S.C. § 1915. This proceeding was referred to this court by Local Rule 72-302 pursuant to 28 U.S.C. § 636(b)(1).

Plaintiff has submitted a declaration that makes the showing required by 28 U.S.C. § 1915(a). Accordingly, the request to proceed in forma pauperis will be granted.

Plaintiff is required to pay the statutory filing fee of \$250.00 for this action. 28 U.S.C. § 1914(a), 1915(b)(1). Plaintiff has been without funds for six months and is currently without funds. Accordingly, the court will not assess an initial partial filing fee. 28 U.S.C. § 1915(b)(1). Plaintiff is obligated to make monthly payments of twenty percent of the preceding month's income credited to plaintiff's prison trust account. These payments shall be collected

1 and forwarded by the appropriate agency to the Clerk of the Court each time the amount in
2 plaintiff's account exceeds \$10.00, until the filing fee is paid in full. 28 U.S.C.
3 § 1915(b)(2).

4 The complaint states a cognizable claim for relief pursuant to 42 U.S.C. § 1983
5 and 28 U.S.C. § 1915A(b). If the allegations of the complaint are proven, plaintiff has a
6 reasonable opportunity to prevail on the merits of this action.

7 Plaintiff has also requested the appointment of inmate Charles G. Reece as
8 temporary counsel and, in the alternative, for appointment of counsel by this court. This court
9 has no authority to appoint a non-attorney to represent petitioner in this action. Moreover, the
10 United States Supreme Court has ruled that district courts lack authority to require counsel to
11 represent indigent prisoners in § 1983 cases. Mallard v. United States Dist. Court, 490 U.S. 296,
12 298 (1989). In certain exceptional circumstances, the court may request the voluntary assistance
13 of counsel pursuant to 28 U.S.C. § 1915(e)(1). Terrell v. Brewer, 935 F.2d 1015, 1017 (9th Cir.
14 1991); Wood v. Housewright, 900 F.2d 1332, 1335-36 (9th Cir. 1990). In the present case, the
15 court does not find the required exceptional circumstances. Plaintiff's request for the
16 appointment of counsel will therefore be denied.

17 In accordance with the above, IT IS HEREBY ORDERED that:

18 1. Plaintiff's request for leave to proceed in forma pauperis is granted.

19 2. Plaintiff is obligated to pay the statutory filing fee of \$250.00 for this action.

20 The fee shall be collected and paid in accordance with this court's order to the Director of the
21 California Department of Corrections filed concurrently herewith.

22 3. Service is appropriate for the following defendants: Alvaro C. Traquina,
23 Randall D. Osborn, Dwayne Highsmith, Yin DeChant, B. Naku, G. Toppenberg and T.
24 Dickinson.

25 4. The Clerk of the Court shall send plaintiff seven USM-285 forms, one
26 summons, an instruction sheet and a copy of the complaint filed March 22, 2005.

1 5. Within thirty days from the date of this order, plaintiff shall complete the
2 attached Notice of Submission of Documents and submit the following documents to the court:

- 3 a. The completed Notice of Submission of Documents;
4 b. One completed summons;
5 c. One completed USM-285 form for each defendant listed in number 3
6 above; and
7 d. Eight copies of the endorsed complaint filed March 22, 2005.

8 6. Plaintiff need not attempt service on defendants and need not request waiver of
9 service. Upon receipt of the above-described documents, the court will direct the United States
10 Marshal to serve the above-named defendants pursuant to Federal Rule of Civil Procedure 4
11 without payment of costs.

12 7. Plaintiff's March 22, 2005 request for appointment of counsel is denied.

13 DATED: June 13, 2005.

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15 
16 UNITED STATES MAGISTRATE JUDGE

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18 mart0557.1a+

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NOTICE OF SUBMISSION

OF DOCUMENTS

_____/

Plaintiff hereby submits the following documents in compliance with the court's
order filed _____:

1 completed summons form

7 completed USM-285 forms

8 copies of the March 22, 2005
Complaint

DATED:

Plaintiff